



INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INVESTIGATION)
ON THE COMMISSION'S OWN MOTION) CAUSE NO. 39983
INTO ANY AND ALL MATTERS RELATING)
TO LOCAL TELEPHONE EXCHANGE) AMENDED INTERIM
COMPETITION WITHIN THE STATE) PROCEDURAL ORDER
OF INDIANA.)
)
)
) APPROVED:
)

BY THE COMMISSION:

AUG 21 1996

G. Richard Klein, Commissioner
Keith L. Beall, Administrative Law Judge

On June 5, 1996, the IURC issued an Interim Procedural Order giving instruction and guidance to any interested entity regarding certain applications under the Telecommunications Act of 1996 here in the State of Indiana. The Commission directed any party wishing to object or amend "any term or directive of this Order" to request an opportunity for hearing in writing within 30 days. June 5, 1996 Order at 6. The Commission received comments from Ameritech Indiana ("Ameritech"), on July 3, 1996; Indiana Cable Television Association, Inc. ("Cable Association"), on June 27, 1996; United Telephone Company of Indiana ("United"), on July 3, 1996; Sprint Communications Company ("Sprint"), on July 5, 1996; and GTE North, Incorporated and Contel of the South ("GTE"), on July 5, 1996, all of which appear in the following words and figures, to wit:

[H.I.]

The Commission having considered the aforesaid comments and being duly advised in their premises, now finds there to be sufficient basis to modify and/or clarify the guidelines presented in our earlier Order of June 5, 1996 in this Cause.

1. Commission Jurisdiction. Pursuant to I.C. 8-1-2-58, 8-1-2-69 and 8-1-2.6 et seq., the Commission has broad authority to investigate any matters relating to any public utility, and more specifically relating to telephone utilities in a competitive environment. This cause was initiated under such broad authority. The Federal Telecommunications Act of 1996 has affirmatively directed this Commission to process certain filings under Sections 251 and 252 of that Act under limited and abbreviated time frames. This duty to process such filings in a timely fashion constitutes a matter "relating to any public utility" within the meaning of I.C. 8-1-2-58, and also falls within the purview of the legislative declaration in 8-1-2.6-1.

The investigation in this Cause was initiated by this Commission in anticipation of federal action. Toward this end an Executive Committee was formed to facilitate the presentation of the various positions of interested parties on competition in the local exchange. While the Act itself was signed into law following the initiation of this investigation, the Commission had directed the parties to specifically consider such proposed legislation during the Executive Committee proceedings and thereafter at the initial hearings in this Cause. This Commission has already named as respondents all providers of telecommunications services within the State of Indiana. The Commission caused notice of these generic proceedings to be published on several occasions since the opening of the official docket on June 14, 1994. Several entities who may not be currently certificated telephone companies within the State of Indiana participated in this Cause as well. The Commission has previously determined jurisdiction over any and all local exchange companies ("LEC's") as well as other telephone companies certificated by this Commission. Certain other entities voluntarily submitted to the jurisdiction of this Commission and participated in this Cause.

The Federal Act directs the Commission to comply with the compressed time frames upon the filing by any party of a document satisfying Section 252 of the Act. The Commission has already received and is processing a request for mediation and two requests for arbitration under the Act as originally anticipated. Accordingly, pursuant to the Commission's authority under IC 8-1-2.6 and related statutes the Commission makes these additional, specific determinations and findings.

2. Discussion of Comments. We will now address the comments of each filing party individually as follows.

Ameritech Indiana filed comments claiming need for clarification of certain procedural guidelines to avoid the guideline's application contrary to the Telecommunications Act of 1996 ("Act"), the Commission's enabling statutes or Commission rules; or, modification of certain other guidelines to conform to purpose and intent of the Act. Ameritech sets forth nine specific areas of concern. They are: who are the appropriate parties to participate in the various proceedings envisioned by the guidelines; what is the proper terminology regarding rejection of agreements under the Act; what specific types of supporting documentation and cost studies are needed; how will the Commission handle confidential and proprietary information; what is the role of the Commission's arbitrator facilitator; what is the basis for the Commission's encouragement of good faith negotiations between the parties; what is the appropriate timing for mediation; why the Commission should reject resubmission of rejected agreements; and, what is the Commission's authority under Indiana law to create and apply the guidelines to specific situations under the Act.

The Cable Association filed its comments noting several areas where clarification is needed. The Cable Association argues that service of any agreements on all parties as required under Subsections (a)(1)(A) and (B) of our June 5, 1996 Order in this Cause is unnecessary and burdensome. Further, the Cable Association claims the only agreements envisioned under the Act to be reviewed by the Commission are "interconnection agreements". Cable Association also requests that the Commission follow the language of the Act and revise Subsection (a)(3) of the June 5, 1995 Order so that the phrase "non-negotiating party" be removed and the Act's reference to "a telecommunications carrier" be used. Cable Association also requests the language regarding the time frames under Subsection (b)(3) of our Order be shortened from twenty-five (25) days to ten (10) days because "waiting" twenty-five (25) days unnecessarily prolongs the process. Next, the Cable Association invites this Commission to make an affirmative finding that Section 251 (f)(1) of the Act automatically exempts rural telephone companies. Finally, the Cable Association argues that we should eliminate any mandatory requirements for attorneys conferences and hearings in our guidelines as this may be a "barrier to competition."

United filed comments noting an area of possible confusion between the Commission's guidelines and the Act's language relative to Section 251(f). More specifically, United points out that Section 251(f)(1) relates to rural telephone companies whereas Section 251(f)(2) refers to "local exchange carriers with fewer than 2 percent of the Nation's subscriber lines...." United makes this important distinction because it argues it does not qualify under Section 251(f)(2) but does come within the definition in Section 251(f)(1). United also requests this Commission expand the process regarding exemption, suspension and modification (Section 251(d) of the Act) to allow for an expedited schedule.

Sprint filed its comments focusing mainly on the processes set forth in the guidelines providing for input from other telecommunications carriers who are not parties to an interconnection agreement process. Sprint argues that anyone should have the opportunity to intervene in the arbitration phase of any such interconnection proceeding. Sprint notes one further requested change to the guidelines is needed. This change involves the requirement under the guidelines to make service of documents. Sprint proposes that service be made by overnight delivery or facsimile.

The final party who filed comments was GTE. GTE takes an opposite view from that of Sprint regarding service copies and participation in arbitrations and meditations. GTE believes that the Commission should remove the requirement for service of negotiated agreements on all parties and that the only parties who are able to participate in the mediation and arbitration sessions should be an incumbent local provider and the requesting provider.

GTE also requests the Commission consider the use of *in camera* hearing(s) relative to confidential or proprietary information. Finally, GTE requests the Commission to modify the guidelines which appear to limit the ability of GTE or any of its affiliates to be eligible for small telephone company exemption status under Section 251(c) of the Act.

3. **Discussion and Findings.** After reviewing and considering all of the filings received, the Commission finds and determines that certain modifications are necessary to avoid confusion and aid in the application of the Commission's guidelines adopted in our June 5, 1996 Order in this Cause. Rather than attempt to discuss and describe each such modification or change in this format, the Commission herein adopts the revised guidelines attached hereto as Attachment A-1. However, to the extent any suggested changes or modifications are not addressed herein, the prior guidelines and directives of our prior Orders in this Cause will remain in effect. We are aware that there have been certain filings made prior to these modifications under the original versions in the June 5, 1996 Order. However, the changes set forth herein do not have a material impact on the filings as received nor on how the Commission is currently processing these matters.

We do find that an additional requirement should be met by any entity filing after the effective date of this Order. Parties should clearly identify in their petitions any and all relevant and applicable dates and deadlines under the Act which may apply to their respective proceedings. Examples include but are not limited to the date of the request for interconnection and any applicable deadlines, such as the 9 month deadline for the arbitration process to be completed by this Commission. Any participating entity should also provide in its filing its proposed procedural schedule which meets the Act's pre-subscribed deadlines and requirements.

The Commission received several Letters of Intent to File for suspension or modification under Section 252(f) from several small rural telephone companies pursuant our Order in this Cause dated July 1, 1996. Having reviewed these Letters the Commission believes it is appropriate to herein notify those rural companies who do pursue suspension and modification under Section 251(f)(2) that the Commission will consider timely consolidation of cases as is envisioned under Section 252(g) of the Act to the extent practical and possible. If a filing company has good cause or reason for this Commission to consider its petition separately, this should be alleged and supported in any Section 252(f)(2) filing.

An additional matter which becomes necessary once again is the need to correct and/or update our service list in this Cause because of the wide sweeping implications of the actions taken herein. The Commission is utilizing the service list in this cause

as a surrogate list of interested parties to local exchange competition matters. The Commission recognizes that this service list as it currently exists is by no means a comprehensive listing of all telephone service providers in the State of Indiana. However, we do recognize that this list purports to represent those parties interested in the issues which have been and will be addressed in this docket. Based upon this, the Commission is using the service list herein as a procedural mechanism in certain instances to put parties on notice of certain timing or events set forth in the attached guidelines. This has become necessary because of the limited timeframes under the Federal Act. This does not, however, prohibit any interested entity from contacting the Commission to obtain publicly available documents or information relative to this Cause. In fact, the Commission has encouraged such contact and involvement throughout this proceeding. Therefore, we find and determine that any entity wishing to receive complete notice of actions filed or procedural dates and deadlines, or, any entity nor longer needing or wanting to receive filings and information in this Cause, can add or remove themselves, respectively, from the service list in this Cause by formally filing and requesting such action.

Finally, regarding the disagreement among the commenting parties as to who may participate in the arbitration and mediation sessions, we find and adopt a process similar to that adopted by the FCC (see FCC Order, Appendix B, Sec. 51.809(g)) that limits participation to the requesting telecommunications carrier and the incumbent local exchange company. These two entities are the "negotiating parties" as discussed in our guidelines and we find that these two entities are the only ones entitled to participate in the arbitration or mediation sessions. Following an agreement being reached, whether by arbitration or mediation, the parties file the agreement with the Commission and the "review" process begins. It is at this "review process" stage that any other interested entity may file comments or seek intervenor status. Any request for intervention would be considered and possibly occur **following** the interconnection agreement being filed as contemplated and discussed in the "review phase" in paragraphs 4 and 5 of Amended Attachment A-1, pages 2 and 3, respectively.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION, that:

1. All interested entities in this proceeding are hereby on notice that the Commission intends to follow the guidelines presented in Attachment A-1 as well as any other guideline or directive not otherwise modified by this Order and that the service list shall be utilized to timely notify interested entities of certain events or filings, consistent with Finding Paragraph No. 3 above.

2. All respondents or any entity wishing to file with this

Commission an agreement or a request for suspension or modification under Sections 252 and 251(f)(2), respectively, of the Federal Telecommunications Act of 1996 shall do so in accordance with the Act as well as the guidelines contained herein or attached hereto as Attachment A-1 and any other guideline or directive not otherwise modified by this Order, or as may be in effect at that time. Such filings shall be considered by the Commission and be approved or rejected consistent with the requirements of the Act and applicable guidelines.

3. The directives and guidelines presented in this Order shall remain in effect until further order of the Commission and the findings set forth in Paragraph 3 above are hereby adopted.

4. This Order shall be effective on and after the date of its approval.

MORTELL, KLEIN AND ZIEGNER CONCUR:

HUFFMAN DISSENTS: SWANSON-HULL NOT PARTICIPATING:

APPROVED:

AUG 21 1996

I hereby certify that the above is a true and correct copy of the Order as approved.



Brian J. Cohee,
Executive Secretary to the Commission

Section 252(a)(1)& (e)(1) - No IURC involvement until agreement submitted for review phase:

(a) Negotiations with Agreement Filing

The negotiating parties may file their interconnection agreement at **any time** during the course of the negotiations; the IURC will issue written finding(s) either approving or rejecting the agreement within 90 days of its filing.

- (1) Day 1 of review phase: parties file the agreement with supporting documentation which indicates the agreement is in the public interest, convenience and necessity, and is non-discriminatory to other telecommunications providers who were not parties to the agreement under an entity's specifically assigned docket number;¹
 - (A) Negotiating parties serve notice of filing the agreement on all entities listed on the local competition docket service list (Cause No. 39983);
 - (B) The IURC may issue public notice for a public hearing and/or another forum to consider and/or hear comments. A telecommunications carrier who was not a party to the negotiations should file its written opposition to the agreement within 20 days following Day 1 of review phase;
- (2) Day 30 of review phase: A hearing or other forum to be determined by the Commission may be held;
- (3) On or before Day 90 of review phase: IURC issues order either approving or rejecting agreement. Grounds for rejection include discrimination against a telecommunications carrier who was not a party to the negotiations or determination that the agreement is not consistent with the public interest, convenience and necessity;
- (4) Within 10 days of approval: IURC makes agreement available for public inspection.

¹ The ILEC or other entity, upon its initial filing, will receive an assigned docket number which will continue as its number for any and all filings under Sections 251 and 252 of the Act and consistent with the requirements in Attachment B.

Section 252(a)(2) & (e)(1)

(b) Negotiations with Mediation & Agreement Filing

The negotiating parties may request IURC participation and mediation. When the final agreement is filed, the IURC has 90 days in which to approve or reject.

- (1) Day 1 following formal request for mediation: A docket number is assigned using the assigned docket numbers (see footnote 1);
- (2) On or about Day 10 of mediation phase: IURC assigns a qualified mediator and staff member;
- (3) On or before Day 25 of mediation phase: mediator schedules Attorneys Conference and thereafter proceeds with mediation;
- (4) Day 1 of review phase of mediated agreement: parties file the agreement with supporting documentation which indicates the agreement is in the public interest and is non-discriminatory to other telecommunications providers who were not parties to the negotiation ;
 - (A) Negotiating parties serve notice of filing the agreement on all entities listed on the service list in Cause No. 39983;
 - (B) The IURC may issue public notice for a public hearing and/or another forum to consider and/or hear comments. A telecommunications carrier who was not a party to the negotiations should file its written opposition to the agreement within 20 days following Day 1 of review phase;
- (5) Day 30 of review phase: A hearing or other forum to be determined by the Commission may be held;
- (6) On or before Day 90 of review phase: IURC issues order either approving or rejecting agreement. Grounds for rejection include discrimination against a telecommunications carrier who was not a party to the negotiations or determination that the agreement is not consistent with the public interest, convenience and necessity;
- (7) Within 10 days of approval: IURC makes agreement available for public inspection.

Section 252(b) & (b)(2)(A) & (b)(3)

(c) Arbitration

Any party to the negotiations may 'petition' the IURC for arbitration (anytime between day 135 and 160 under the Act). The arbitration petition must identify those issues agreed upon, unresolved issues, and positions of parties on unresolved issues. The non-petitioning party has 25 days in which to respond to the arbitration petition. When the arbitration petition is filed, the IURC, as arbitrator, has 9 months (from the day the formal request for interconnection, services or network elements is received by the ILEC) in which to resolve the disputed issues. The IURC has 30 days from the date the final agreement is filed in which to approve or reject. The IURC may request additional information from the parties after the petition is filed. If information is not received, the IURC may proceed on the basis of the best information available from any source.

- (1) Day 1 of arbitration phase: The IURC assigns the arbitration petition a docket number, an arbitration facilitator, and a Commission staff member who has not been involved in any requested mediation;
- (2) Day 15 of arbitration phase: the arbitration facilitator will formally notify the parties of all scheduled dates and times;
- (3) 45 Days prior to the end of the total negotiation period (9 months): Arbitration facilitator files report with recommendations with IURC to be considered (if arbitration petition filed on day 160, this would be day 225);
- (4) On or before end of 9 month negotiation period: IURC issues arbitration order resolving issues;
- (5) Day 1 of review phase: Parties submit their final agreement serving copies of the ratified arbitrated agreement on all entities listed on the service list in Cause No. 39983;
 - (A) Non-negotiating entities should file their written comments about the agreement within 15 days of Day 1 of the review phase;
 - (B) IURC will issue findings approving or rejecting the agreement within 30 days of the filing of the ratified arbitrated agreement (Grounds for rejection - ratified arbitrated agreement does not meet section 251 or section 252(d) conditions);
- (6) Within 10 days of approval: IURC must make agreement available for public inspection.

Section 251(f)(1) & (f)(2)

(d) Small Telco Exemption, Suspension and Modification

Under the Act, certain Indiana telcos are automatically exempt from the specific provision of Section 251(c), wherein there is an obligation to negotiate. This automatic exemption may change in two ways:

(1) The small telco receives a 'bona fide' request for interconnection from a competitor (the IURC must be notified); the IURC has 120 days in which to terminate the exemption and establish an implementation schedule (that is consistent with FCC regulations) or to approve continuation of the exemption.

- (A) Day 1: Small telco receives a bona fide request for interconnection, services or network elements and 'notice' is filed with IURC (IURC definition of notice should include all information about the bona fide request) - docket number assigned;
- (B) On or before Day 10: An Attorneys Conference is scheduled for Day 25;
- (C) On or before Day 25: An Attorneys Conference is held at which time the dates for petitioner prefile, responses, rebuttal and public hearing are established (Discovery and written/oral testimony may be limited because of compressed time frame);
 - (i) Technical conferences requested by staff, parties or non-negotiating entities;
- (D) Day 60: Public Hearing held;
- (E) Day 120: Order issued.

(2) The small telco files a petition with the IURC requesting suspension and modification of (b) the obligations of all local exchange carriers and/or its obligations under (c) including the duty to negotiate interconnection; the IURC has 180 days in which to grant or deny the request.

- (A) Day 1: small telco files petition - docket number assigned;
- (B) On or before Day 10: An Attorneys Conference to take place no later than Day 25;
- (C) On or before Day 25: An Attorneys Conference is held at which time the dates for petitioner prefile, responses, rebuttal and public hearing are established (Discovery and written/oral testimony may be limited because of compressed time frame);
 - (i) Technical conferences requested by staff, parties or non-negotiating entities;
- (D) By Day 100: Public Hearing held;
- (E) Day 180: Order issued.

Dissenting Opinion of Mary Jo Huffman
Cause No. 39983
August 21, 1996

While I believe that this amended interim order is a step in the right direction in clarifying the Commission guidelines for implementation of the Telecommunications Act of 1996, I must dissent on this order based on my beliefs and my desire to speak consistently in this Cause.

As I stated in an earlier dissent in this Cause, I believe the Commission is using the wrong forum in attempting to implement TA96. It is evident from the various filings in this Cause that this Commission's continued attempt to fit the TA96 into this Cause has resulted in confusion for many of the participants. Therefore, once again I state my position that we should terminate this Cause and proceed hereafter under TA96, adhering to its mandate of less rather than more regulation, in separately docketed proceedings.



Commissioner Mary Jo Huffman